IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14/10/2004

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT APPEAL NO.4103 OF 2003
AND
W.P.NO.27163 OF 2003 and
W.P.M.P.NOS.33112 of 2003 & 31700 of 2004

W.A.No.4103 of 2003:

The Chennai Metropolitan Water
Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002,
rep. by its Managing Director .. Appellant

-Vs-

1. M/s.Khrunichev State Research and
Production Space Centre,
Russian Federation 121087,
Moscow, Novozavodskaja Street, 18
rep. by its Power Agent,
Subramanian, P.Thrivikraman
Sole Proprietor,
First Planet Engineering,
C-1, Parsn Guruprasad,
432, T.T.K.Road, Chennai-600 018.

2. State of Tamil Nadu,
rep. by its Secretary,
Municipal Administration
And Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009. .. Respondents

For Appellant :: Mr.N.R.Chandran, AG,
assisted by D.Krishnakumar,SplGP
Mr.A.L.Somayajee, Addl.A.G.
for Mr.K.N.Pandian
For Respondents :: Mr.R.Parthasarathy for

M/s.Sathish Parasaran

Prayer: This Writ Appeal is preferred against the order passed by
the learned Single Judge dated 15-12-2003 made in W.P.M.P.No.33211 of 2
003 in W.PNo.27168 of 2003.

W.P.No.27168 OF 2003:

1. M/s.Khrunichev State Research and
Production Space Centre,
Russian Federation 121087,
Moscow, Novozavodskaja Street, 18
rep. by its Power Agent,
Subramanian, P.Thrivikraman
Sole Proprietor,

First Planet Engineering,
C-1, Parsn Guruprasad,
432, T.T.K.Road, Chennai-600 018. .. Petitioner

-Vs-

1. State of Tamil Nadu,
rep. by its Secretary,
Municipal Administration
And Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Chennai Metropolitan Water
Supply and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002,
rep. by its Managing Director .. Respondents

For Petitioner :: Mr.R.Parthasarathy for
M/s.Sathish Parasaran

For Respondents :: Mr.A.L.Somayajee, Addl.A.G.
for Mr.K.N.Pandian for R2
Mr.N.R.Chandran,A.G.,for R1
assisted by D.Krishnakumar,
Spl.G.P.

Prayer:

This Writ Petition is filed under Article 226 of the
Constitution, praying for issuance of Writ of Certiorarified Mandamus, to call
for the records comprised in 2nd respondent's Notification dated 22-9-200 3
and quash the same and consequently to direct the respondents to evaluate the
petitioner's tender bid for a 300/200/100 MLD Sea Water Desalination Plan

proposed at Minjur, Chennai on Design, Build, Own, Operate and Transfer (DBOOT) basis and to accept the same without insisting on the furnishing of EMD by the petitioner or otherwise refusing to consider the petitioner's tender on the ground of the petitioner being the sole tenderer.

:COMMON JUDGMENT

F.M.IBRAHIM KALIFULLA, J.

The Writ Appeal has been preferred by the Chennai Metropolitan Water Supply and Sewerage Board (herein after called 'CMWSSB') as against the interim order of the learned Single Judge dated 15-12-2003 in W.P.M.P.No.33211 of 2003 in W.PNo.27168 of 2003, in and by which, the learned Single Judge passed orders making the interim stay absolute in respect of confirmation of the re-tender Notification pertaining to the establishing of 300/200/100 MLD Sea Water Desalination Plan at Minjur, Chennai.

2. When the Writ Appeal was posted for admission, having regard to the nature of the issue involved, the main Writ Petition itself was directed to be posted. Thereafter, a connected public interest litigation filed by one of the Advocates in W.P.No.38684 of 2003 was also linked along with the Writ Appeal. However, when that Writ Petition, namely, W.P.No.38684 of 203 was taken up for hearing on 7-10-2004, the petitioner therein expressed his desire to withdraw the Writ Petition and accordingly, that Writ Petition was dismissed as withdrawn. Therefore, we are now concerned only with the Writ Appeal as well as the main Writ Petition.

3. The Writ Appeal is against the interim order and therefore, the disposal of the Writ Appeal depends upon the disposal of the Writ Petition.

4. We, therefore, heard the submissions of the learned counsel made on the subject matter of the Writ Petition. In this order, we refer to the status of the parties as described and narrated in the Writ Petition.

5. The prayer of the petitioner in the Writ Petition is, for the issuance of Writ of Certiorarified Mandamus, to call for the records of the Notification dated 22-9-2003 issued by the second respondent, quash the same and consequently direct the respondents to evaluate the petitioner's tender bid for 300/200/100 MLD Sea Water Desalination Plan proposed at Minjur, Chennai on Design, Build, Own, Operate and Transfer (DBOOT) basis and accept the same without insisting on the furnishing of EMD by the petitioner or otherwise refusing to consider the petitioner's tender on the ground that he was the sole tenderer.

6. Based on the averments and materials placed before us, it can be culled out that there was a publication on 2-5-2003, inviting tenders for implementing a 300/200/100 MLD Sea Water Desalination Plant at Minjur, Chennai on Design, Build, Own, Operate and Transfer (DBOOT) basis (herein after referred to 'DBOOT'). The above said Tender provided for three options for erecting the plants, viz., either i) 100 MLD or ii) 200 MLD or iii) 300 MLD Sea Water Desalination at Minjur, Chennai by any of the bidders' technology from their own funds.

7. The technical criteria and the financial criteria to be submitted were also specified in the notice inviting tenders. Apart from the

above, it was specifically provided that all bids must be accompanied by a bid security (EMD) of a value of Rs.50 lakhs for option (i), Rs.100 lakhs for option (ii) and Rs.150 lakhs for option (iii) in the form and manner specified in the bid document and it must be delivered along with the bids. It was also stipulated that the above said bid security amount should be enclosed for each option individually for which the bidder choose to bid. CMWSSB reserved its right to reject any or all the bids without assigning any reasons thereof. However, it was mentioned that all bid clarifications would be provided by CMWSSB.

8. One other relevant factor in the notice inviting tenders was, that the Technical Bid envelope and Price Bid envelope must be placed in two independent covers duly sealed and delivered with the Contracts and Monitoring of CMWSSB. It was further stipulated that the respective bid security (EMD) amount to be accompanied, the bids should be submitted in a separate sealed cover and kept in the Technical bid envelope. As per the notice inviting tenders, the bids received after the specified date and time would be summarily rejected.

9. The scope of work to be undertaken by the selected bidder was to carry out and complete the work of implementing of Sea Water Desalination plant on DBOOT basis at Minjur, Chennai which included the provision of required pipeline of appropriate size, pumping machinery and construction of pump house to project the water to the existing underground reservoir of CMWSSB at Red Hills which is located at about 32 k.ms. away from the site. The whole contract was a bulk water purchase agreement, by which, CMWSSB agreed to purchase desalination water up to minimum of 80% of the installed capacity of plant on a 'take or pay' basis and such agreement would be for a period of 25 years and extendable thereafter on mutually agreed terms and conditions. The CMWSSB agreed to provide the required land of 60 acres at Minjur on lease basis on a nominal fee of Rs.1000/- per month. A separate lease agreement was to be entered with CMWSSB.

10. Again in the 'Procedure for Bidding', it was specifically stipulated that in order to be eligible for bidding, each bidder on its own or on a joint venture basis should satisfy the minimum eligibility criteria as laid down in the applicable "Notice Inviting Tender" issued by CMWSSB.

11. A reading of the stipulations contained in the Notice Inviting Tender, disclose that apart from technical criteria and financial criteria, the furnishing of bid security depending upon the options for which the bid is to be submitted was made a condition precedent for accepting the tender. The tender documents were to be submitted in a sealed cover before 15.00 hours on 27-8-2003. It also provided for a pre-bid meeting on 18-6-2003 at 11.00 a.m. to clarify the issues and to answer queries on any matter that may be raised at that stage pertaining to the bid. Clause 13.3 of the Procedure for Bidding in the book, containing all documents relating to the bid also stated that apart from the pre-bid meeting the Board may entertain further queries from the bidders if they are submitted atleast 20 days before the due date of submission of the bid.

12. Under Clause 15.2 of the Procedure for Bidding, it is specifically mentioned that the bid should be submitted exactly as per the procedures and requirements stipulated therein.

13. Under Clause 16.1, there was a minor modification as

regards the submission of Initial Bid Security (EMD), by which, it was provided that if a bidder quotes for more than one option, the Initial Bid Security to be deposited by him would correspond to the highest capacity option quoted by the bidder.

14. Under Clause 16.2, it is mentioned that after the opening of the Technical Bid, the technically qualified bidders whose price bid is proposed to be opened by MCWSSB, should submit a Final Bid Security for a value of Rs.250 lakhs for 100 MLD plant, Rs.500 lakhs for 200 MLD plant and Rs.750 lakhs for 300 MLD plant. Here again, it was mentioned that if a bidder was found technically qualified for more than one option, the Final Bid Security to be deposited by him would correspond to the highest capacity option.

15. Under Clause 16.5, it is provided that the Initial Bid Security of technically qualified bidders would be returned once they furnished the requisite Final Bid Security. Clause 16.8 which is more relevant for our present purpose, specifically provides that any bid submitted without the Bid Security in the form as specified in the " Request for Proposal" (hereinafter referred to ''RFP'') would be summarily rejected.

16. Clause 16.9 is the forfeiture clause. Clause 21.1 reiterated that the bid should be submitted in three options, viz., Part (A) Bid Security, Part (B) Technical Bid and Part (C) Price Bid. The specific descriptions to be shown in the respective envelopes for the three different Parts have also been described under the said Clause. The prescription made in the Notice Inviting Tenders to the effect that the Bid Security envelope should be placed inside the Technical Bid envelope also thus stood modified. In other words, the three different Parts, viz., Part A, Part B and Part C were to be submitted in three independent envelopes.

17. The Form and Evaluation of Proposals as contained in the 'RFP' dealt with the manner in which the various Parts of the Bid should be submitted by a bidder as well as the procedure of the 'Bid Opening and Evaluation. In the 'Bid Opening and Evaluation part, as first stage of Evaluation, it is stipulated that CMWSSB would first open the Bid Security and technical Bid envelopes and assess whether the bidder fulfils the minimum qualifying criteria and whether the bids are responsive. It is also stipulated therein that the Board should assess whether the proposal is in accordance with the guidelines stipulated in the 'RFP' document, viz., whether the Initial Bid Security is in the required form and whether the various other documents required are submitted. As per the said Clause, if the bidder failed to fulfil the minimum qualifying criteria, he would stand disqualified and his bid has to be returned.

18. Necessary formats in which the various details as regards the Technical Experience, Financial Capacity, Acknowledgement of 'RFP' Document and intent to bid, Letter of Conformity, Format of Bank Guarantee for Initial Bid Security and Final Bid Security, Price Schedule to be filled up by the Bidder and also the site map were all provided in Appendix 1 to 8 respectively.

19. It is in the above said background of the stipulations contained in the ''RFP'', the case of the petitioner requires to be considered. In the above background, the other facts relating to the Bid Proposal submitted by the petitioner are also required to be stated.

20. The petitioner is stated to have expressed its option to participate in the above said Bid. The representative of the petitioner attended the pre-bid meeting on 18-6-2003 and it is relevant to state that in that meeting, no query was raised on behalf of the petitioner. To a specific question put by us to the learned counsel appearing for the petitioner, it was admitted that no query as regards the submission of the EMD was raised on behalf of the petitioner in the said meeting. On 21-6-2003, there was a communication from the Consulate General of Russian Federation in Chennai to the Managing Director of CMWSSB which was to the following effect:-

"Dear Sirs,
We are thankful to you for the opportunity given to M/s.Khrunichev Centre, a Russian Government body to participate in above tender.

As a Russian Government body, they are exempted from tender bonds, e.g.projects with ISRO, MOD etc.

Hence we request you to kindly approve and exempt them from submission of tender bonds.
Thanking you,
yours truly,
Consul General of
the Russian Federation
in Chennai.
M.Mgeladze."

21. It is relevant to mention that the said communication was not sent by the petitioner. On 11.8.2003, the CMWSSB replied to about 171 queries raised by different parties, answering the said queries. It is stated that about 26 bidders purchased the bid documents. On the last date for submission and opening of the bid viz., 27.8.2003, only two bids were received. Of which, one was the petitioner and the other was stated to be one Bakeman Projects Limited, Israel. According to CMWSSB, the bids were opened and scrutinised by Tender Scrutiny Committee on 27-8-2003 and since both the bids did not contain E.M.D., i.e., Initial Bid Security,, both the tenders were rejected. The remarks of the Tender Scrutiny Committee was stated to have been placed before the Tender Committee on 30-8-2003 when the Tender committee passed a resolution accepting the recommendations of the Tender Scrutiny Committee to reject both the tenders on 1-9-2003. Thereafter on 5-9 -2003, the CMWSSB held its Board Meeting and resolved to accept the recommendation of the Tender Committee to reject both the tenders. It was only thereafter on 22-9-2003, the publication of Notice inviting fresh tenders were called for, which provoked the petitioner to file the present Writ Petition.
22. The Writ Petition came to be filed on 25-9-2003 and the interim stay of confirmation which was initially granted on 29-9-2003 came to be affirmed subsequently on 15-12-2003. It is stated that in the re-tender process, the tender documents were opened on 18-12-2003 and that the petitioner who submitted its tender on the second time also did not furnish necessary EMD, namely, the Initial Bid Security.

23. Certain other relevant factors which are also required to be stated, are that the petitioner is described as M/s.Khrunichev State Research and Production Space Center, Russian Federation-121087, Moscow, Novozavodskaja Street-18. It is stated to have been represented by its Power Agent, one Thiru Subramaniam P.Thrivikramam as Sole Proprietor, First Planet Engineering, Chennai-18. The said Thiru Subramaniam P Thrivikramam has sworn to the affidavit filed in support of the Writ Petition. He also claims himself to be duly constituted Power of Attorney acting for and on behalf of the petitioner.

24. At this juncture it will have to be stated that when we called upon Mr.R.Parthasarathy, learned counsel for the petitioner to produce the Power of Attorney said to have been executed in his favour of the deponent, he submitted that such power was by way of a National Agent Agreement as between the petitioner and the Proprietory concern, called the First Planet Engineering, belonging to the deponent. A copy of which had been filed in the typed set of papers filed in the Writ Petition which is dated 10-10-2001.

25. A perusal of the said agreement only shows that it provided for the terms and conditions as regards the manner in which the business as between the petitioner and the concern called Frist Planet Engineering is to be regulated. However, Mr.R.Parthasarathy, later submitted that the Power of Attorney in Russian language was submitted in Part A of the Bid documents. We looked into the said document as found in Part A which had been written in a language claimed to be Russian language. In any event, it is relevant to state that neither the National Agent agreement dated 10-10-2001 or the so called deed of Power of Attorney in Russian language were not executed in the required stamp value in respect of a power of attorney to be valid as prescribed in the Stamp Act.

26. By virtue of the nature of the transactions involved in this bid, the Power claimed by the petitioner would fall within Article 48(b) of the Indian Stamp Act, as and by which, the said power should have been made in a Rs.15/- non-judicial stamp paper as the petitioner is stated to have authorised the deponent to the affidavit as well as the Proprietory concern to act in a single transaction than what has been prescribed under Article 48(a) or on a Rs.20/- valued Stamp paper, if it is cured by the Residuary Article 48(c). In any event, it is not known whether the said Power of Attorney empowered the deponent to the affidavit to launch and pursue the litigation on behalf of the petitioner. Admittedly, there is no Power of Attorney filed by the petitioner in this Writ Petition authorising the deponent to the affidavit to launch the present writ proceedings. Therefore, in our opinion at the very out set, it will have to be held that the Writ Petition filed by its so called Power of Attorney holder cannot be maintained at all and on that score, this Writ Petition is liable to be rejected in limine. However, we do not propose to reject the Writ Petition on that technical ground. Therefore, we proceed to decide the issue involved on merits.

27. Mr.R.Parthasarathy, learned counsel for the petitioner in his submissions, raised the following contentions:

1) the submission of Initial Bid Security by way of EMD was not a pre-requisite for a tender, therefore, non submission of EMD will not invalidate the tender submitted by the petitioner;

(2) even if the rule provided for furnishing of Initial Bid

Security in short, EMD, it was not an invoidable Rule;
(3) when the petitioner raised the issue relating to nonsubmission of EMD by contending that it was a Government of Russia Enterprise and that it already had exemption when it performed certain contracts for ISRO and other Central Government Organisations, the same should have been considered as a query and answered as provided in the procedure in Clause 13.3. of the Procedure for Bidding. Therefore, the petitioner's bid ought not have to been rejected;
(4) the petitioner offered to supply water at a competitive rate which ought to have been considered in Public Intent in the light of severe water crisis prevailing in the city of Chennai;
(5) the rejection of the petitioner's tender was tainted with mala fides since the petitioner refused to accede to the demand of bribe by the highly placed officials of CMWSSB as well as the concerned Ministers; and
(6) the process of opening of tender was not carried out in the presence of Tender Scrutiny Committee as prescribed under the provisions of the Tamil Nadu Transparency in Tenders Act, 1998. The learned counsel relied upon the observations of the learned Single Judge in his order dated 15-12-2003 in support of his submission.
The learned counsel relied upon "AIR 1990 SC 958 (M/S.G.J. FERNANDEZ versus STATE OF KARNATAKA AND OTHERS)", "(1991)3 SCC 273 (PODDAR STEEL CORPORATION versus GANESH ENGINEERING WORKS AND OTHERS) and (2001)8 SCC 491 (UNION OF INDIA AND OTHERS versus DINESH ENGINEERING CORPORATION AND ANOTHER)" in support of his submissions.
28. As against the above submissions, Mr.A.L.Somayaji, learned Addl.Advocate General submitted that furnishing of Initial Bid Security was a pre-condition and therefore CMWSSB was justified in rejecting the petitioner's tender summarily.
29. As regards the exemption claimed by the petitioner, the learned Addl.Advocate General would submit that at no point of time either prior to the submission of the tender or on the date of opening of the tender, any general order of exemption as provided under the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 was produced by the petitioner. In fact, according to the learned Addl.Advocate General, the so called letter said to have been issued by ISRO, dated 6-8-2003 was found to be a forged one, inasmuch as the authorities of ISRO themselves have confirmed that such a communication never emanated from their Office. As regards the non-communication of rejection order, the learned Addl.Advocate General would submit that there was no obligation to communicate the order of rejection and that in any event, the petitioner was duly informed of the rejection which was also acknowledged by the petitioner as reflected in the petitioner's own communication dated 24-9-2003 addressed to the Superintending Engineer of CMWSSB.
30. As regards the contention of mala fides and demand of illegal gratification, the learned Addl.Advocate General would state that in none of the correspondence to the CMWSSB, there was any reference to any particular individual or officers or the concerned Ministers who is said to have made any demand of bribe and therefore, the said submission does not merit any consideration.
31. As regards the constitution of Tender Scrutiny Committee, the learned Addl.Advocate General placed before the Court the concerned

proceedings of the CMWSSB constituting the Tender Scrutiny Committee and also submitted that the tender documents were opened in the presence of the members of the Tender Scrutiny Committee who have also initialled in all the tender documents perused by them.

32. When the learned counsel for the petitioner produced a xerox copy of a communication dated 12-9-2003 said to have been sent by First Planet Engineering to the Hon'ble Chief Minister in the course of the hearing of this Writ Petition on 7-10-2004, in order to show that there was a reference to one Mr.Mohan Raghavan who made a demand of bribe from the petitioner as well as from other senior Russian Diplomats claiming himself to be a representative of the Managing Director and senior officials of CMWSSB, the learned Addl.Advocate General pointed out that this communication has been suddenly and surprisingly produced on behalf of the petitioner for the first time and that there was no reference to the said communication in any of the affidavits filed by the petitioner in this Court. He also pointed out that there was also no proof for having sent such a communication said to have been forwarded to the Hon'ble Chief Minister.

33. As regards the contention that the petitioner's query relating to exemption was not duly replied, the learned Addl.Advocate General submitted that that cannot be construed as a query as the same did not relate to the technical aspects of their bid. According to him, when the CMWSSB replied as many as 170 queries of 26 bidders and when the Initial Bid Security was a pre-condition, there was no question of the said issue being treated as a query as claimed by the petitioner. According to the learned Addl.Advocate General, the said contention of the petitioner cannot also be considered. The learned Addl. Advocate General further submitted that on the opening date of the tender, namely, 27-8-2003, the petitioner's representative was present and the tender documents were opened in the presence of the members of the Tender Scrutiny Committee as disclosed by their initials found on the Tender Documents. The learned Additional Advocate General also brought to our notice the common supporting affidavit filed by the Tender Scrutiny Committee members in support of his submission. The learned Addl.Advocate General relied upon "2002(1) CTC 88 (BALCO EMPLOYEES, UNION (REGD.) versus UNION OF INDIA), 2004(2) CTC 221 (DIRECTORATE OF EDUCATION AND OTHERS versus EDUCOMP DATAMATICS LTD. AND OTHERS) and (2000)5 SCC 287 (MONARCH INFRASTRUCTURE (P) LTD., versus COMMISSIONER, ULHASNAGAR MUNICIPAL CORPORATION AND OTHERS)" in support of his submissions.

34. In his reply, Mr. Parthasarathy, attempted to point out that the initials of the members of the Tender Scrutiny Committee found on the tender documents and the common supporting affidavit differed, without realising that while in the affidavit they had put their full signatures, whereas in the tender documents, they had only put their initials. He also contended that some of the queries answered by CMWSSB suggests, as the one found in query NOs.149 and 150 which are similar to the issue relating to the EMD and therefore, it should be held that that would also form part of the term 'queries' as provided in the 'RFP'.

35. Having considered the submissions of the learned counsel for either parties, and also the material papers, we find that the main question to be decided in this Writ Petition is as to, whether the rejection of the petitioner's tender by the second respondent Board was justified and for valid reasons. Only if that question is answered in the affirmative, the

question of setting aside the second respondent's action for re-tender in its Notification dated 22-09-2003 will arise?
36. When we consider the main question, certain uncontraverted facts will have to be stated. They are,

(i) the tender in question was governed by the stipulations contained in the book entitled 'Request For Proposal' ('RFP').
(ii) There can be no dispute that in the said 'RFP' among several other stipulations, it is specifically provided that necessary bid security, namely 'EMD' both Initial as well as Final are to be submitted by the tenderers.
(iii) There is a specific stipulation that all the bids must be accompanied by the Bid Security, namely EMD in the form as specified in the 'RFP' and in the event of non-submission of EMD, the bid document is liable to be summarily rejected. One other relevant condition is that the details in relation to the technical criteria and financial criteria to be submitted as per the prescribed format as shown in the Appendix are to be submitted along with the bid. On a detailed consideration of the various stipulations contained in the ''RFP'' it will have to be held that such stipulations are to be scrupulously complied with by the tenderers if they are to insist for consideration of their tenders for the award of the work.

37. In this context, before going into the rival contentions, we feel it appropriate to refer to the decision of the Honourable Supreme Court reported in "1994 (6) SCC 651 (TATA CELLULAR versus UNION OF INDIA)", in particular paragraph No.94, wherein, the scope of power of judicial review in such cases has been succinctly set out, which reads as under:
"94. The principles deducible from the above are:
(1). The modern trend points to judicial restraint in administrative action.
(2). The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
(3). The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
(4). The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
(5). The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasiadministrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
(6). Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

38. The said decision has also been subsequently followed by the Honourable Supreme Court in "(2001) 2 SCC 451 (W.B.STATE ELECTRICITY BOARD versus PATEL ENGINEERING CO.LTD. AND OTHERS)". Further, in 2001 (2) SCC 451, the Honourable Supreme Court has also stated as to the importance of the rules, instructions and tender conditions in the award of contract where internationally competitive bidding was made. In paragraph No.24 of the said judgment, the Honourable Supreme Court has stated the legal position as under:
"24. The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 and 11 are all bound by the ITB which should be complied with scrupulously. Ina work of this nature and magnitude where bidders who fulfil pre-qualification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to the ITB or rules is the best principle to be followed, which is also in the best public interest."

39. Bearing the above principles in mind, when we analyse the case on hand, we find that admittedly the petitioner did not furnish the Initial Bid Security, namely, the EMD. According to the petitioner, it being Department of the Russian Government and since it had the benefit of exemption from furnishing EMD in respect of ISRO namely, the Government of India functionary and certain other public institutions it is entitled for similar treatment in respect of the present tender floated on 2-05-2003. The petitioner would also claim that the Consulate General of Russia at Channai also supported its stand as regards its claim for exemption by issuing a special communication on 21-0 6-2003. In the said communication of the Consulate General, it is specifically mentioned that the petitioner had the benefit of exemption from payment of EMD by ISRO, MOD etc., In fact, in the Part (A) of the bid proposals submitted by the petitioner, we find along with the covering letter of the petitioner dated 28-02-2003, the letter of the Consulate General dated 21-6-2003 and a letter dated 06-08-2003 issued by the ISRO, Liquid Propulsion Systems Centre, Trivananthapuram and two other sheets of paper said to be containing certain statements in Russian language. On top

of the said documents, it is written as 'power of attorney copy' and 'power of attorney'. While the copy is not visible, the other one is in a blurred state.

40. When submissions were made by the learned Additional Advocate General by referring to the letter dated 06-08-2003 issued by ISRO, Mr. Parthasarathy, learned counsel appearing for the petitioner took a categoric stand that the said letter was never furnished by the petitioner. One other claim of the petitioner as regards the nonfurnishing of EMD was that the 'RFP' provided for raising queries as regards the bid, that though no query was raised by the petitioner in the pre-bid meeting held on 18-06-2003, a specific plea was raised in the Consulate General's letter dated 21-06-2003 which was well within the period before which, any queries have to be submitted prior to the final date of bid, wherein the Consulate General specifically stated that the petitioner was exempted from tender bonds by ISRO, MOD etc., and the second respondent should also approv e the petitioner's bid by exempting them from submission of tender bonds. The learned counsel, therefore, contended that having not answered the said issue by treating it as a valid query as provided in the 'RFP', the rejection of the Bid on that ground cannot be sustained.

41. When we consider the above aspects in detail we are of the view that the petitioner miserably failed to establish its stand. In the first place, when we consider the stand of the petitioner that no such communication as contained in part (A) of the bid proposals, viz., the letter dated 06-08-2003 said to have been issued by the ISRO, we had the opportunity to view the video disc said to have been taken at the time of opening of the tender document on 27-08-2003 in the presence of the learned Addl.Advocate General, Mr.S.Parthasarathy, learned counsel for the petitioner, Mr.Subramanian, the Deponent to the Writ Petition Affidavit and Mr.Gnanasekaran, Asst.Engineer. While viewing the video disc, we were able to discern the following facts.

42. We could easily visualise from the said display the presence of the deponent to the affidavit who was also present in Court at the time of hearing of the writ petition. As claimed by the second respondent only two of the bids were available which were opened. As far as the petitioner□s bid was concerned, there was a small cover containing a covering letter alone dated 22-8-2003. When the main cover was opened, three different covers were taken out from the main cover. The first cover stated to be Part A bid proposal was initially opened by one of the persons present in that venue who has now been identified as Mr.Gnanasekaran, Asst.Engineer. On opening the said cover, the contents of the covering letter dated 22-08-2003 was also read out by the person who opened the cover. Thereafter, the said person was viewing the other papers contained in that file, in which, we are able to easily identify the so-called letter dated 06-08-2003 issued by ISRO in favour of the petitioner along with certain other documents (We could make such comparison while viewing the video compact disc recorded at 9.52-9.53 minutes, the snaps (two in number) of which are enclosed as Annexure-II to this order). When we compared the Part A cover as well as the file contained therein with the one displayed in the video disc, we are convinced that the said communication dated 06-08-2003 said to have been issued by the ISRO was very much available in that cover containing Part A bid proposals. Apparently, the petitioner appears to have filed the said document in support

of its claim that it had the benefit of exemption of tender bonds by ISRO. In fact, the transcription of the video compact disc produced by the Writ Appellant disclose that the deponent to the Writ Petition Affidavit, in the course of the opening of the Tender, when it was pointed out that the Bid Security was not found in the 'bid security envelope', voluntarily came out with a statement that the petitioner has already arranged for it and that it will reach within 72 hours. In the course of the conversation, the deponent to the Writ Petition Affidavit also claimed that he had enclosed a letter from ISRO apart from the Power of Attorney in his favour which is in Russian language. In fact, such a stand of the petitioner vis-a-vis ISRO was consistant and specific both by the petitioner as well as the Consulate General of Russia. In order to compare the said document, when we asked the learned counsel for the petitioner to produce any letter issued by ISRO, the learned counsel took the stand that that cannot be revealed inasmuch as it was confidential in nature. Since it is claimed by the petitioner that it is entitled for exemption as part of the Russian Government, we were not interested in compelling the petitioner to produce the document as in our view, we felt that if at all the petitioner wanted to claim any benefit, it was for the petitioner to establish the same to the satisfaction of this Court. But for the reasons best known to it, the petitioner was not inclined to produce the said document under the guise of confidentiality. We are not in a position to understand as to how a simple letter of exemption issued by ISRO will have anything to do with secrecy as neither the second respondent nor was the Court was interested in finding out the details of any contract which the petitioner was said to have agreed to perform for ISRO. We, therefore, infer that the claim that there was a different letter issued by ISRO as now stated by the petitioner is a blatant lie.

43. The Minutes of the proceedings recorded by us on 12-10-204 while viewing the transcription of the video compact disc recorded on 27 -8-2003 between 3.30 p.m. and 4.10 p.m., the print out snaps (two in number) taken from the compact disc recorded at 9.52 - 9.53 minutes and the transcription of the video compact disc recorded on 27-08-2003 are made part of this order, as Annexures viz.,

Annexure-I: Minutes of the proceedings recorded on 12-10-204 while viewing the video compact disc recorded on 27-8-2003 between 3.30 p.m. and 4.10 p.m.

Annexure-II: Print out snaps (two in number) taken from the compact disc recorded at 9.52-9.53 minutes showing that said Gnanasekaran, Asst.Engineer was holding the so-called letter dated 06-08-2003 issued by ISRO.

Annexure-III: The Transcription of the video compact disc recorded on 27-08-2003 of the conversation between the parties during the period when the Bid proceedings were opened.

44. From the above analysis, we could only reach the conclusion that the petitioner deliberately withheld the original of any letter said to have been issued by ISRO granting exemption from tender bonds and that the xerox copy of the letter dated 6-8-2003 said to have been issued by the ISRO found in the 'RFP' bid proposal was factually produced by the petitioner and the petitioner alone, while submitting its tenders. When we reach the above said irresistible conclusion, the next question would be as to whether the stand of the second respondent that the so called letter of ISRO,

dated 6.8.2003 produced by the petitioner was a forged one is correct or not?
45. When we examined the said question, the learned Additional Advocate General referred to a communication dated 29.9.2003 written by the second respondent to the address found in the communication dated 6.8.2003 said to have been issued by the ISRO to find out as to whether the said communication was really issued by them and as to the works for which any tender was submitted by the petitioner as well as the other details as regards the grant of such work, nature of exemption, etc. To the said communication of the second respondent, the Controller of ISRO replied on 1.10.2003 stating as under:

"This has reference to your confidential letter NO.CMWSSB/C&M/ NT/C2 /W/Desa Plant/DBOOT/ICB/001/2003 dated 29.9.2003 on the above subject addressed to Director, LPSC. We are quite surprised to note the contents of your letter. In this connection we inform you that the letter purported to have been sent from LPSC is a forged letter and LPSC has not issued any such letter on this subject and we totally disown this. It is suggested that you may keep the above position in mind while dealing with the subject in question."

46. The second respondent also produced a fax message from the Department of Space, Civil Engineering Division issued by one VR.Renga Samy in his capacity as Chief Engineer dated 13.2.2003. It reads as under:

"PL.REF.YR LTTR. DT.6.10.03 (.) THIS IS TO CONFIRM THAT M/S. KHRUNICHEV STATE RESEARCH AND PRODUCTION SPACE CENTER, MOSCOW, RUSSIA, HAVE NOT CARRIED OUT ANY CIVIL WORKS FOR OUR DEPARTMENT AND HENCE, TEHRE IS NO QUESTION OF EXEMPTING THEM FROM EMD(.) IT IS ALSO FOR YOUR INFORMATION THAT THE CIVIL ENGINEERING DIVISION OF DEPARTMENT OF SPACE IS THE ONLY NODAL AUTHORITY TO TAKE UP CIVIL WORKS IN ANY OF THE CENTRES OF ISRO(.) REGARDS."

47. A close reading of the above referred to documents also make it clear that the so called exemption said to have been granted by the Indian Space Research Organisation, for that matter, even by any of the other Departments, the Department of Space had nothing to do with the petitioner in any of its civil engineering works. The learned Additional Advocate General also took pains to point out a specific reference to the above details in the counter affidavit filed on behalf of the respondents, wherein, in paragraph No.10, the above referred two documents were referred to in detail and also stating that the respondents reserved their right to take appropriate action against the petitioner for making a misrepresentation with forged documents.
48. In reply to the said counter affidavit, there was another affidavit filed on behalf of the writ petitioner wherein, in paragraph 3(ii), the petitioner took a stand that the so called letter issued by ISRO was never given by the petitioner. It is also stated in the said paragraph that the same requires a detailed investigation as may be deemed appropriate by this Court. As we have stated earlier having regard to the various materials including the video disc, we are prima facie satisfied that the letter said to have been issued by ISRO on 6.8.2003 was found in the Part A bid proposal submitted by the petitioner. We are therefore of the confirmed view that the present attempt of the petitioner is only to wriggle out of the crisis now faced by it based on the subsequent clarifications issued by that very Department viz., ISRO as well as the Department of Space, Government of India.

49. Having regard to the above said circumstances, we have no reason to doubt that the petitioner has not approached this Court with clean hands. If really there was an exemption by ISRO, as claimed by the petitioner, we see no justifiable reason for the petitioner to burk the original letter said to have been issued by ISRO. As we stated earlier by revealing the said document atleast to the notice of this Court, certainly no prejudice would have been caused to the petitioner nor to the interest of ISRO or for that matter, the interest of the nation as claimed by the petitioner. We are of the firm view that the whole attempt of the petitioner was to wriggle out of the situation in which it is now placed. When once it is confirmed that the so called letter of exemption issued by ISRO was not available for the petitioner to be relied upon, then there is no other material for the petitioner to contend that there was any scope for granting any exemption in its favour from complying with the tender bonds, viz., furnishing of E.M.D.

50. On this aspect, when the contention of the petitioner that its claim for exemption was not duly replied to within the stipulated time by the second respondent as provided by the 'RFP' Regulations and therefore the ultimate rejection of the petitioner's bid cannot stand is considered, it will have to be held that first and foremost, there is no specific requisition from the petitioner to the second respondent claiming exemption. When we perused the letter of the Consulate General dated 21.6.2003, which only states that the petitioner as a Russian Government body are exempted from the tender bonds for projects with ISRO, M.O.D. etc., and therefore, the petitioner's bid should be approved and exempted from submission of the tender bonds. Along with the said letter, an enclosure was said to have been made. The petitioner did not show as to what was the said letter of the petitioner, which was enclosed along with the Consulate General's letter dated 21.6.2003. Therefore, we are not in a position to assert as to what was the stand of the petitioner that was taken when the Consulate General addressed its communication on 21.6.2003. Even assuming for the sake of argument that the exemption claimed on behalf of the petitioner by the Consulate General is to be treated as a query, it will have to be held that such a stand can never be acceded to, for more than one reason. As per clause 13.3 as contained in the Procedure for Bidding in the 'RFP', all queries and issues raised by the bidders at the pre-bid meeting will have to be backed up in writing by the respective bidders, if not before the meeting then subsequent to it, and such queries are to be raised at least 20 days before the date of submission of bid. As per the above clause 13.3, when such queries are raised by any bidder, that has to be answered by the second respondent. In the first place, the petitioner has not specifically raised any such query as claimed by it before the second respondent. When the petitioner is the bidder, the Consulate General's letter dated 21.6.2003 cannot be considered as the query raised by the bidder. Further, when clause 16.8 of Procedure for Bidding contained in 'RFP' specifically mentions to the effect that any bid submitted without the Bid Security in the form as specified in the 'RFP' document should be summarily rejected, we fail to understand as to how there could be any query at all on this aspect. Therefore, the stand of the petitioner that the so called query raised by the Consulate General on behalf of the petitioner not having been answered, the second respondent was not entitled to reject the bid is absolutely baseless,

not supported by any Rule or Regulation nor even by any statutory provision.
51. On the other hand, when the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 as well as the Rules framed thereunder are perused, we find under Rule 14, a specific mandatory requirement is stipulated to the effect that the tender document require all tenderers without exception to pay an EMD ordinarily not exceeding one per cent of the procurement by means of demand draft, bankers cheque, specified small savings instruments or where the procuring entity deems fit, irrevocable bank guarantee in a prescribed form. It is also prescribed therein that the tender documents should clearly state that any tender submitted without the EMD in the approved form be summarily rejected provided that any category of tenderers specifically exempted by the Government from the payment of EMD will not be required to make such deposit. In other words, the said Rule 14 of the Tamil Nadu Transparency in Tenders Rules, makes it clear that in the absence of any Notification by the Government, either by the State of Central Government, no tenderer can claim exemption from the payment of prescribed EMD. Therefore, even assuming that the so-called letter dated 6-8-2003 said to have been issued by ISRO was true, the same will be of no value when it comes to the question of the tender floated by the second respondent. In so far as the petitioner was concerned, unless there was a specific notification by the first respondent-State exempting the petitioner from submitting EMD for any such works of the second respondent, his Bid cannot be taken as a valid Bid in the absence of necessary EMD.
52. Therefore, viewed in the above background, when admittedly, the petitioner which submitted its tenders for all the three options in order to validate its tenders at the time of its submission ought to have submitted Initial Bid Security to the value of 150 lakhs as provided under Clause 16.1 of the Procedure for Bidding in the 'RFP'. The petitioner having thus failed to comply with the mandatory requirement both under the stipulations contained in the 'RFP' as also under Rule 14 of the Tamil Nadu Transparency in Tenders Rules, 2000, it has no right to question the action of the second respondent in refusing to consider the petitioner's bid under the 'RFP'. When we are thus convinced of the above said position, we do not find any fault with the second respondent in rejecting the petitioner's bid at the threshold. In such circumstances, when we applied the principles set out by the Hon'ble Supreme Court in the judgment reported in "1994 (6) SCC 65 1 (TATA CELLULAR versus UNION OF INDIA), as well as, 2001(2) SCC 451 (W.B.STATE ELECTRICITY BOARD versus PATEL ENGINEERING CO.LTD. AND OTHERS)", we find that the manner in which the decision taken by the second respondent while rejecting the tenders was perfectly in order. Further as pointed out by us earlier, in a global tender like the present one, where heavy stakes were involved, it is essential to maintain sanctity and integrity of the process of tender/bid and also award of contract. A mere claim of the petitioner that it is a part of the Government of Russia will not by itself place it on any higher pedestal to flout the prescribed statutory and the bid regulations and allow the petitioner to participate in the bid even without submitting the required EMD. As held by the Hon'ble Supreme Court adherence to the instructions in the 'RFP' cannot be given a go-by as otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional value. In fact, any such regularisation would create justifiable doubts in the minds of

other bidders and would impair the rule of transparency and fairness apart from providing scope for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts.

53. Even in public interest, we are convinced that no such relaxation could have been shown by the second respondent on its own in the absence of any specific notification by the State Government prior to the submission of the bids by the petitioner exempting it from providing necessary EMD. We also find support from the decision of the Hon'ble Supreme Court reported in "2004 (2) CTC 221(DIRECTORATE OF EDUCATION AND OTHERS versus EDUCOMP DATAMATICS LTD., AND OTHERS)", wherein the Hon'ble Supreme Court has held in para 12 to the following effect.

"12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. That the government must have a free hand in setting the terms of the tender. It must have reasonable play in its points as a necessary concomitant for an administrative body in an administrative sphere. The Courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular circumstances. The Courts cannot strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."

54. Further in the decision reported in 2000(5) SCC 287 (cited supra), the Hon'ble Supreme Court specifically dealt with a case of a bidder who failed to submit the earnest money deposit for a sum of Rs.1.70 crores in the form of a crossed demand draft/pay order or cash. Dealing with the said issue, the Hon'ble Supreme Court held that the conditions of the notice inviting tender when specified that bid should be accompanied by a demand draft/pay order or cash, the bid submitted with a cheque along with a photocopy of the demand draft on the ground that the original demand draft was misplaced cannot be accepted and the concerned department was justified in rejecting the tender offer as not fulfilling the conditions of the Tender Notice. Similarly in the case of the petitioner, in the absence of any valid acceptable exemption in the form of a Government notification in its favour, the failure of the petitioner in not furnishing the EMD in the prescribed form for the prescribed amount by itself defeats the claim of the petitioner as against the second respondent for rejecting its tender at the threshold. We therefore fully agree with the stand of the second respondent on this score.

55. One other issue raised on behalf of the petitioner was that the rejection of the petitioner's tender was not duly communicated to the petitioner. On this aspect, reliance was placed upon Section 10 of the Tamil Nadu Transparency in Tenders Act. Under Section 10(7), it is specifically provided that the Tender Accepting Authority should intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers. Under Section 11 of the said Act, it is provided that any tenderer aggrieved by the order passed by the Tender Accepting

Authority under Section 10 of the Act, can appeal to the Government within ten days from the date of receipt of order and the Government shall dispose the appeal within fifteen days from the date of receipt.

56. A conspectus reading of Section 10 and 11 makes it clear that an order accepting the tenders as well as rejection of other tenders are to be communicated to all concerned. In the case on hand, we find that the petitioner was informed about the rejection of its tenderer by the second respondent. In fact, the petitioner itself addressed a communication on 24-9-2003 where, the petitioner has stated as under:

"1) We thank you for kindly phoning us of the rejection of Khrunichev bid by CMWSSB and permitting us to collect the price bid.

2) We will get the authorisation letter from Khrunichev Center, Moscow for collecting the price bid on Sep.25/26, 2003 and request you to permit us to collect the price bid on Sep.26, 2003 at 1600 hours.

3) Our principals, Khrunichev most humbly request you to also return the technical bid especially the process information section since this contains proprietary information.

At the end of the letter, it is again stated-

... since the Khrunichev bid is rejected, kindly allow the technical bid also to be returned."

57. That was a letter written by the concern called First Planet Engineering, and the signatory to the letter is none other than the deponent to the Writ Affidavit. Therefore, it is clear that the rejection of the petitioner's tender was duly communicated to the petitioner that though not in the form of a written order. It is not the case of the petitioner such failure on the part of the second respondent in not communicating the rejection in the written form caused any prejudice to the petitioner either for filing an appeal or for any other reason. In fact, the petitioner is stated to have again submitted its Tender for the Re-bid It is true that the Rules and Regulations prescribed in the matter of conduct of any bid should be scrupulously followed as directed by the Hon'ble Supreme Court. Viewed in that respect, the non communication of the rejection by a specific written order can be construed as a violation of the provisions of the Tamil Nadu Transparency in Tenders Act 1998, but the question is whether on that score, there would be any scope for this Court to interfere with the admitted rejection of the petitioner's bid on a valid ground, viz., for non-submission of EMD. In our considered view, the firm answer should be 'no'. If the petitioner has got any other relief to be claimed on that score, if so available, it is for the petitioner to work out the same. Certainly on that score, there is no scope for interfering with the said rejection of the petitioner's bid by the second respondent as made by it on 27-8-2003. In other words, the rejection of the petitioner's bid for violation of the stipulations contained in the 'RFP' as well as that of Rule 14 of the Tamil Nadu Transparency in Tenders Rules 2000 is final and conclusive and the same cannot be interfered with.

58. One other contention raised on behalf of the petitioner was that the tender documents were not opened in the presence of the Tender Scrutiny Committee as stipulated in the Rules as prescribed under Rules 22 to

24. On this aspect, the learned Addl.Advocate General placed before us, the proceedings of the Managing Director dated 27-8-2003 approving of the formation of Tender Scrutiny Committee consisting of five Officers, viz., (1) Engineering Director (2) Chief Engineer (C&M), (3) Chief Controller of Finance (4) Joint Director (T&D and C&R) and (5) Executive Engineer (C&R). Draft Agenda for the Tender Committee has also been placed before us which disclose as in what manner, the Tender Committee should go about as regards the various tenders that may be submitted in pursuant to the 'RFP'.

59. Further on a perusal of the tender documents submitted by the petitioner in three envelopes, viz., Part A, Part B and Part C, we find that the tender documents submitted in Part A has been initialed by three of the Members of the Tender Scrutiny Committee. Similarly the very same initials were also found in the first document contained in the file of papers found in Part B envelope. That apart the common supporting affidavit filed by the Members of the Tender Scrutiny Committee dated 10-9-2004 filed in W.P.M.P.NO.31700 of 2004, also confirm that three of the Tender Scrutiny Committee Members were present on the date of opening of tender on 27-8-2003 and that such opening was made in the presence of the petitioner. They also confirm that the letter dated 6-8-2003 said to have been issued by ISRO was found in the Bid Security envelope submitted by the petitioner. We have no reason to doubt the said version of the Members of the Tender Scrutiny Committee. That apart when we viewed the video disc, we could easily identify the presence of the three Officers whose identity was verified before us when we played the disc in the presence of the learned Addl.Advocate General, by the Officer of the second respondent, namely, Mr.Gnanasekaran as well as the deponent to the affidavit filed in support of the Writ Petition and his counsel Thiru R.Parthasarathy. Therefore, when the petitioner was duly informed about the presence of the Tender Scrutiny Committee Members before the opening of tenders on 27-8-2003 at 3.00 p.m. and since the petitioner never raised this issue before the second respondent and choose to raise it only for the first time in this Writ Petition, it will have to be held that the said contention is purely an after-thought and the same does not merit any consideration. In any event, since the petitioner disqualified himself by not adhering to the prescriptions contained in the 'RFP' as well as Rule 14 of the Tamil Nadu Transparency in Tenders Rules 200 0, this contention pales into insignificance.

60. One other contention which was raised in a highly exaggerated form was the allegation of demand of bribe by the highly placed officials of the second respondent and also the Ministers concerned. At the outset, it will have to be stated that though such a serious allegation of mala fides have been raised by the petitioner, the concerned officials were not made as a party to this Writ Petition to enable them to refute the allegations. Therefore, the veracity of the allegations made by the petitioner had to be solely tested based on the ipse-dixit statements contained in some of the documents filed before us and the averments made in the affidavit. It is relevant to state that till 7-10-2004, there was no document nor any specific averment in the affidavit of the petitioner referring to any particular official or any other person with reference to whom, it was stated that a demand of bribe was made with the petitioner. On 7-10-2004 in the course of his submissions, Mr.Parthasarathy, learned counsel for the petitioner produced a communication dated 12-9-2003 which is stated to

have emanated from the Office of the First Planet Engineering to the Hon' ble Chief Minister, Government of Tamil Nadu, wherein, in para 2, it is stated that one Mr.Mohan Raghavan, representing the Managing Director and Senior Officials had been claiming in 'cash charges/bribes' from Khrunichev and also claimed the same from Senior Russian Diplomats. It is also stated that 'a threat has been made that if Rs.50 crore is not paid, the tender will be rejected'. Apart from the above said letter which was produced in Court on the last date of hearing, namely 7-10-2004, reliance was placed upon the following communications, viz., i) letters dated 15-9-2003 and 19-9-2003 addressed to the Hon'ble Chief Minister, State of Tamil Nadu. In paragraph (C) of the letter dated 15-9-2003, it is stated as under:
"C. The real Reason for CMWSSB's illegal acts:
1. The real reason for CMWSSB's wrong decision appears to be different. Certain person claiming to represent CMWSSB Managing Director and Senior Ministers telephoned Moscow and us several times seeking substantial gratification (Rs.50 Crores). They also were present outside the hall when tender was opened and again, repeated their requests. We are willing to provide details so that a detailed investigation can be made by State Government."

61. This communication was again issued by the Proprietory concern called, First Planet Engineering. Though the signature of the person is not found, it is mentioned that the signatory to the document was the deponent to the affidavit filed Petition in his capacity as President. In the other communication where the reference is found viz., the letter dated 19-9-2003 issued by Khrunichev, State Research and Production Space Center, addressed to the Hon'ble Chief Minister of Tamil Nadu wherein, in paragraph 7, it is stated as under:

"7. Demand for bribes:

It is with great regret, we are forced to bring to Your Excellency's attention the demand for Bribes by representatives of MD-CMWSSB and others. We have received several telephone Calls in Moscow; our representative First Planet Engineering was asked for money in CMWSSB premises itself on tender opening date by persons coming out of MDCMWSSB's Offices and even Consul was approached by representatives of CMWSSB-MD and officials that if we do not pay money, our tender will be rejected. We have rejected all such claims.
As per our government policy, we cannot undertake any such corrupt acts."

62. This communication was stated to have been signed by one Kirill L.Florovski in his capacity as Chief Designer of Khrunichev State Research and Production Space Center. Apart from the above two communications, in the affidavit filed in support of the Writ Petition in para 17, it is stated as under:
"17. The petitioner states that the entire process of tender adopted by the second respondent vitiated by mala fides and corrupt motives. The project does not appear to sub serve the public interest, but unfortunately to draft personal gains by certain individuals. The corrupt

motives on the part of the second respondent has been very clearly set out by the petitioner in its representation dated 19-9-2003 to the Hon'ble Chief Minister of Tamil Nadu. ...."
".... while so, the attempt to reject the petitioner's tender on the ground that the petitioner is a single tenderer can only be termed as an invented excuse to refuse the contract to the petitioner for its failure to comply with the unconstitutional and illegal demands made by the persons wielding power in the second respondent Corporation. The entire process of the tender bristles with mala fides and instances clearly highlighting colourable exercise of power. The petitioner's tender has not been seriously considered at all or scrutinized as required under the law only for the reason that the petitioner refused to accede to illegal demands...."

63. The above said averments have been denied by the second respondent in para 20 of its counter affidavit filed in November, 2003. The petitioner reiterated such averments in its counter affidavit to the vacate stay petition filed by the second respondent.

64. It is also relevant to note that while the petitioner has stated in the above referred passages that there was a demand of illegal gratification by certain persons representing the Managing Director of the second respondent as well as some senior Ministers who is stated to have telephoned Moscow Office of the petitioner, there is no affidavit filed in support of the said version by any of the officials of the petitioner, namely, M/s.Khrunichev State Research and Production Space Center nor the officials of the Consulate General of Russia in Chennai. Further as rightly contended by the learned Addl.Advocate General, we find great variation in the signature found in the communication dated 19-9-2003 addressed to the Hon'ble Chief Minister of Tamil Nadu which signature is stated to be that of one Thiru Kirill L. Florovski whose admitted signature is found in the covering letter dated 22-8-2003 found in Part A Tender Bid Proposal. There is absolutely no similarity at all to either of the signatures. That apart there is no document to show whether these communications were really delivered as claimed by the petitioner. Therefore, whether the communications dated 15-9-2003 and 19-9-2003 were really sent by the petitioner is highly doubtful. When according to the petitioner, the Russian Consulate General was keenly interested in the petitioner securing this contract and some of the officials of the Consulate General of Russia were also stated to have visited the office of the second respondent when the demand for bribe was stated to have been made with them, we are unable to understand as to how a highly placed dignitary at the level of Consulate General can simply brush aside such a serious issue of demand of bribe by not even preferring a complaint to the concerned police authorities, but permitted a representative of the petitioner, namely, the First Planet Engineering to straight away address to the Hon'ble Chief Minister, that too, without any specific particulars. When we put a specific question to Mr.R.Parthasarathy learned counsel for the petitioner as to whether any complaint was preferred with any of the police authorities, the learned counsel tacitly made a statement that no police complaint was preferred at any point of time till this date against any one, much less against Thiru Mohan Raghavan whose name has been referred to in the communication dated 12-9-2 003 said to have been addressed to the Hon'ble

Chief Minister of Tamil Nadu. It is unfortunate that the petitioner would expect that his allegation of demand of bribe on behalf of the highly placed officials of the second respondent was some times made over phone and yet the petitioner did not bother to take any serious steps to bring the culprits to book. In the above said background when we analyse the conduct of the petitioner, we only feel that the petitioner was only attempting to threaten the second respondent with such bald allegation of demand of bribe and thereby try to secure the contract in its favour. When we read the contents of the above said communications, we find that while referring to the demand of brib e, the petitioner would only press for the award of the contract in its favour. Therefore, we are convinced that there is total lack of bona fides in the stand of the petitioner on this score. Therefore, in the absence of relevant particulars relating to any particular individual or officer, we are unable to attach any importance to the bald statements found in the above extracted passages contained in some of the communications of the petitioner said to have been addressed to the Hon'ble Chief Minister of Tamil Nadu or the second respondent herein.

65. From the above conduct of the petitioner though it claims to have the concurrence of the Consulate General of Russia, with heavy heart, we are obliged to state that the petitioner as well as the concerned officials who claim to support the petitioner have thrown their responsibility to the winds by making a reckless allegation without any basis. Further when we consider such conduct of the petitioner in the light of the fact that it has chosen to disown its own document found in Part A of the bid proposals, we only feel that the petitioner was hell-bent to thwart the attempt of the respondents to erect the desalination plant as planned by it that too with a destructive mind. Therefore, the allegation of the second respondent that the petitioner produced a forged letter of ISRO, which on prima facie consideration of the available materials on record, we are able to accept, only strengthen our view that the whole attempt of the petitioner in having launched this Writ Petition was not in the interest of the public at large, but with a view to stultify every effort of the respondents in bringing out the desalination plant by calling for re-tenders in the month of September 2003 and in that process also tarnish the image of the institution. By resorting to the said process of filing this Writ Petition though the petitioner has achieved to some extent by delaying the whole proceedings of re-tender till this date, it will have to be held that when a very severe water crisis is prevailing in Chennai, the deponent to the Writ Petition affidavit who is none other than a resident of Chennai, was unmindful of the long standing grievances of the public at large, who are undergoing untold suffering due to lack of proper potable water by resorting to this frivolent litigation.

66. we are, therefore, of the considered view that the allegations of mala fide or demand of bribe have absolutely no basis. Equally the contention of the petitioner that by making such illegal demands, the public interest was thrown to the winds by the second respondent can only be characterized as shedding of crocodile tears by the petitioner. The present litigation was perpetrated by the petitioner or for that matter to be precise by the deponent to the Writ Petition affidavit purely out of personal interest. Therefore, we strongly condemn the action and the attitude of the petitioner in this regard. We would therefore, recommend to the appropriate

Authority of the first respondent to make a thorough probe in the affairs of the deponent to the Writ Petition affidavit keeping in mind that the Authorities of ISRO have disclaimed the letter dated 6-8-2003 furnished by the petitioner through the deponent and in the event of finding any cognizable offence committed by him, both in respect of the allegation as regards the demand of bribe alleged against the second respondent as well as certain Ministers and also the so-called forgery committed in regard to the letter dated 6-8-2003 said to have been issued by ISRO proceed against him as per law without any further loss of time.

67. By the imprudent act of the petitioner, very essential and need of the hour in bringing out the desalination plant for the city of Chennai has been mercilessly stultified by the petitioner during the pendency of the Writ Petition. We, therefore, feel that exemplary costs should be imposed on the petitioner for having perpetrated this thoughtless litigation in this Court. Therefore, while dismissing the Writ Petition, we award a costs of Rs.50,000/- to be paid by the petitioner to the Legal Services Authority. We direct the Registry to draft necessary decree for the said sum as against the petitioner jointly with the deponent to this affidavit Thiru Subramanian P. Thrivikraman to be payable within a period of two weeks from the date of receipt of copy of this order.

68. In the result, the Writ Petition fails and the same is dismissed with costs as quantified above.

69. The Writ Appeal No.4103 of 2003 has been preferred as against the interim order of the learned Single Judge dated 15-12-2003 making the interim stay absolute. In view of the dismissal of the Writ Petition, the Writ Appeal has become infructuous and the same is dismissed as having become infructuous. No costs.

70. Consequently, all connected W.P.M.Ps. are closed.

(N.D.,J.) (F.M.I.K.,J.)
-10-2004
Index: Yes/No
Internet: Yes/No
suk
Note:
The Registry is directed to put the entire Tender Bid documents along with the VCD in a separate cover duly sealed and keep it as part of the records of this Writ Petition and Writ Appeal.

To
1. State of Tamil Nadu,
rep. by its Secretary,
Municipal Administration
And Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Chennai Metropolitan Water
Supply and Sewerage Board,
No.1, Pumping Station Road,

Chintadripet, Chennai-600 002,
rep. by its Managing Director.